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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,845	12/03/2001	Shuki Vitek	266/217	3098

23639 7590 12/11/2003  
BINGHAM, MCCUTCHEN LLP  
THREE EMBARCADERO, SUITE 1800  
SAN FRANCISCO, CA 94111-4067

EXAMINER

IMAM, ALI M

ART UNIT PAPER NUMBER

3737

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/005,845

Applicant(s)

VITEK, SHUKI

Examiner

Ali Imam

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 9/9/2003 (IDS-filed 5/20/3).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-11 and 14-24 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of the Claims***

1. Prosecution on the merits of this application is reopened on claim 1-24 considered unpatentable for the reasons indicated below:

The indicated allowability of claims 1-24 is withdrawn in view of the newly discovered reference(s) to Nelson (US 4,625,542). Rejections based on the newly cited reference(s) follow.

2. Applicant is advised that the Notice of Allowance mailed 4/7/2003 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

### ***Claim Objections***

3. Claim 1 is objected to because of the following informalities: in line 13 of the claim, the word "bas", is confusing. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-3, 6-11, and 14-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson (US 4,625,542).

In regard to claims 1 and 9, Nelson teaches in Fig. 2 (reproduced below), an apparatus/system for measuring power of acoustic energy of an ultrasound transducer (col. 1, lines 15-18) comprising: a container/housing (14) comprising a fluid (44) inherently having a first density therein; a buoyant body (16) floating in the fluid, the buoyant body inherently having a second density less than the first density since it floats at a first level in the fluid inside

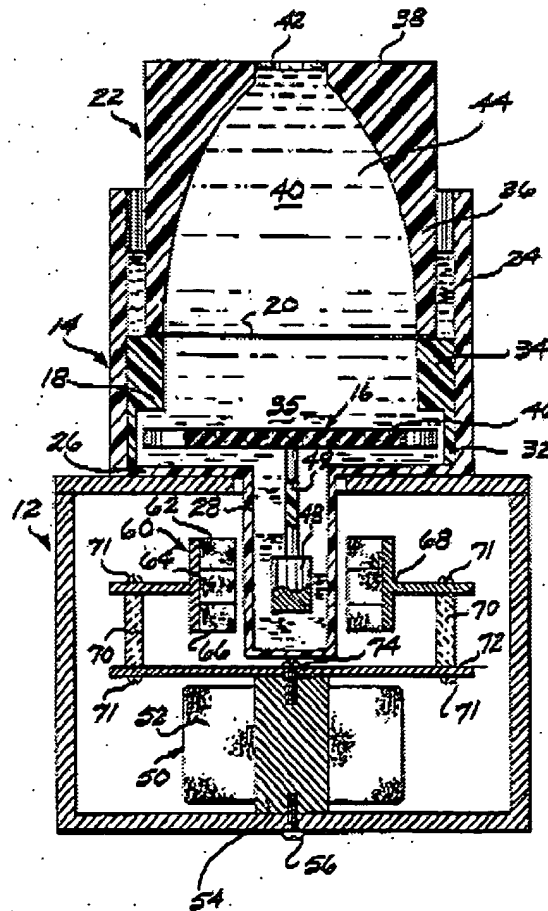


Fig. 2.

the container when the buoyant body is not impacted by acoustic energy (col. 5, lines 4-15)

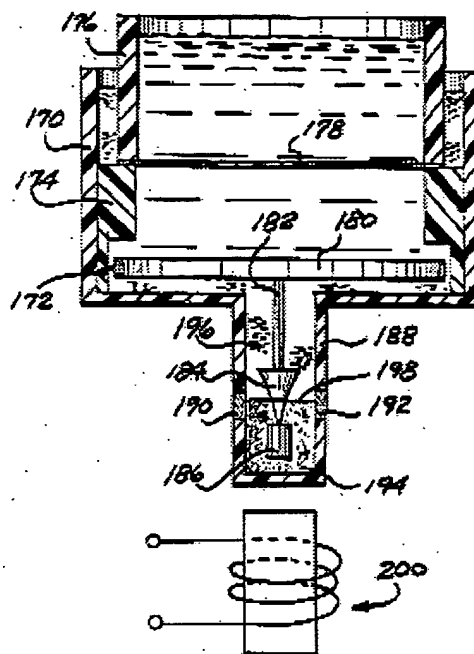
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wherein the buoyant body comprising a wave receiving surface (46). Nelson further teaches that when the wave receiving surface (46) is impacted by acoustic energy, the buoyant body floats at a second level wherein the displacement of the buoyant body between the first and second levels being directly related to the power of the acoustic energy transmitted by the transducer (col. 1, line 35).

In regard to claims 2 and 10, Nelson teaches a drive means/level indicator adapted to generate various drive signals in order to cause the float means to be suspended at a predetermined height. It is inherent that at least one of the signals would correspond to at least one of a level ("zero level"; see col. 6, line 26 and col. 9, line 32) at which the buoyant body floats in the fluid, and a vertical displacement of the buoyant body relative to a reference point.

In regard to claims 3 and 11, Nelson teaches a servo control system (80) that inherently includes a control circuitry for producing control electrical signals (82) wherein the control circuitry is coupled to the drive means/level indicator as mentioned above. Nelson further teaches that the control signals are generated in response to the signals for controlling a power of the acoustic energy output by the ultrasound transducer (col. 5, lines 60-65).

In regard to claim 6, Nelson teaches in Fig. 8 (reproduced in the next page), a first fluid (194) having a first density, a second fluid (196) having a third density less than the density of the buoyant body (172), wherein the second fluid (196) is disposed above the first fluid (194) such that the buoyant body (184 of the buoyant body 172) floats at a boundary (198) between the first and second fluids.



*Fig. 8.*

In regard to claim 7, Nelson teaches that the fluid comprises water (col. 4, line 54).

In regard to claims 8 and 15, Nelson teaches an output device (84), which is considered to be the level indicator, claimed by the applicant.

In regard to claim 14, Nelson teaches that the transducer is disposed within a casing comprising a membrane (20), and wherein the container (14) is disposed on the membrane such that the container is acoustically coupled to the transducer.

In regard to claims 16-24, the reference meets all the claimed structures as set forth above. The method concerning the steps of providing a buoyant body; impinging a surface on the buoyant body; measuring displacement of the buoyant body, etc., claimed by the applicant, are inherently met by the disclosure.

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*Allowable Subject Matter*

6. Claims 4-5 and 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: Claims 4-5 and 12-13 are allowable because none of the prior art, alone or in combination teaches a level indicator comprising a transmitter for outputting one or more wireless signals.

*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Imam whose telephone number is 703-305-0028. The examiner can normally be reached on Mon. - Th., 8:00- 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on 703-308-2262. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Ali Imam  
Examiner  
Art Unit 3737

AMI  
9/17/2003